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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 130625564-3711-01]

RIN 0648-XC736

Main Hawaiian Islands Deep 7 Bottomfish Annual Catch Limits and Accountability Measures for 2013-14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed specifications; request for comments.

SUMMARY: NMFS proposes to specify an annual catch limit of 346,000 lb for Deep 7 bottomfish in the main Hawaiian Islands for the 2013-14 fishing year. If and when the annual catch limit is projected to be reached, NMFS would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed specifications and fishery closure support the long-term sustainability of Hawaii bottomfish.

DATES: Comments must be received by [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this proposed specification, identified by NOAA-NMFS-2013-0103, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0103, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- Mail: Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808-944-2108.

SUPPLEMENTARY INFORMATION: The bottomfish fishery in Federal waters around Hawaii is managed under the Fishery Ecosystem Plan

for the Hawaiian Archipelago (Hawaii FEP), developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations at 50 CFR 665.4 require NMFS to specify an annual catch limit for MHI Deep 7 bottomfish each fishing year, based on a recommendation from the Council. The Deep 7 bottomfish are onaga (Etelis coruscans), ehu (E. carbunculus), gindai (Pristipomoides zonatus), kalekale (P. sieboldii), opakapaka (P. filamentosus), lehi (Aphareus rutilans), and hapuupuu (Epinephelus quernus).

The Council's recommendation of an annual catch limit of 346,000 lb considers the most recent bottomfish stock assessment, risk of overfishing, past fishery performance, recommendations from its Scientific and Statistical Committee (SSC), and input from the public. The proposed annual catch limit is based on a 2011 stock assessment that indicated that the MHI Deep 7 bottomfish were not overfished and not subject to overfishing. No new information suggests that this situation has changed. The proposed annual catch limit is associated with less than a 41 percent probability of overfishing the Deep 7 bottomfish in the MHI. This risk level is more conservative than the 50 percent risk threshold allowed under NMFS guidelines for

National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If and when the annual catch limit is projected to be reached, NMFS, as an accountability measure, would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish in Federal waters for the remainder of the fishing year. If and when NMFS closes Federal waters to fishing for Deep 7 bottomfish, State of Hawaii law allows the State to adopt a complementary closure of the Deep 7 fishery in State waters. During a closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI, except as otherwise authorized by law. However, vessels legally registered to Pacific Remote Island Area bottomfish fishing permits may still fish for and possess or sell Deep 7 bottomfish, provided they otherwise comply with all other laws and regulations. There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year.

NMFS will consider public comments on the proposed annual catch limit and accountability measure, and anticipates announcing the final specifications prior to the scheduled reopening of the fishery on September 1, 2013. The fishery will continue until August 31, 2014, unless the fishery is closed

earlier because the annual catch limit is reached. Regardless of the final annual catch limit, all other management measures will continue to apply in the MHI bottomfish fishery.

To be considered, comments on these proposed specifications must be received by [insert date 15 days after date of publication in the FEDERAL REGISTER], not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the Hawaii FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the legal basis for it are contained in the preamble to these proposed specifications.

NMFS proposes to specify an annual catch limit (ACL) of 346,000 lb for Deep 7 bottomfish in the main Hawaiian Islands (MHI) for the 2013-14 fishing year, as recommended by the Western Pacific Fishery Management Council. NMFS monitors Deep 7 bottomfish catches based on data provided by commercial fishermen to the State of Hawaii. If and when the fishery is projected to reach this limit, NMFS, as an accountability measure (AM), would close the commercial and non-commercial fisheries for MHI Deep 7 bottomfish for the remainder of the fishing year. The proposed ACL and AM specifications are identical to those NMFS implemented for the 2011-12 and 2012-13 fishing years, and support the long-term sustainability of Hawaii bottomfish.

However, NMFS does not expect the ACL will be reached, and that this rule will not have an adverse economic impact on the affected entities. In the 2011-12 fishing year, NMFS set an identical ACL for Deep 7 bottomfish, and 468 commercial vessels reported landing 228,388 lb of Deep 7 bottomfish. Based on the most recent landings information, the fishery is unlikely to reach the ACL set for the 2012-13 fishing year. The 2012-13 fishing year started on September 1, 2012. As of July 12, 2013, 442 commercial vessels reported landing 222,489 lb of Deep 7 bottomfish, at an average landed price of \$5.66/lb, for an estimated average gross revenue from Deep 7 bottomfish landings

of \$2,849 per vessel. The fishery is not likely to reach the ACL before the current fishing year ends on August 31, 2013. NMFS proposes to specify the same ACL for 2013-14 as in 2012-13. Assuming an average price of \$5.66/lb and 442 participating vessels, NMFS expects the proposed 2013-14 ACL of 346,000 lb to yield up to \$1,958,360 in total revenue, or an average of \$4,431 per vessel. Accordingly, if implemented, the ACL set here will not adversely impact affected entities; indeed, it may benefit them if the whole ACL is harvested.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries, effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. Id at 37400 (Table 1). Based on available information, NMFS has determined that all vessels in the current fishery are small entities under the SBA definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$19 million, the small business size standard for finfish fishing. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there are

would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

Pursuant to the RFA, NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, and they all would continue to be considered small under the new standards. NMFS does not think that the new size standards affect analyses prepared for this action, and solicits public comment on the analyses in light of the new size standards.

Even though this proposed specification would affect a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, NMFS does not expect the rule will have a significantly adverse economic impact to individual vessels. Landings information from the 2011-12 fishing year (completed) and the 2012-13 fishing year (ongoing) suggest that Deep 7 bottomfish landings are not likely to exceed the ACL proposed for 2013-14.

Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), NMFS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of
E.O. 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: August 16, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

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